

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050202

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS ISSUE FOUR

On May 05, 2014, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent. The complaint alleges four issues.

On May 15, 2014, the District filed a Motion to Dismiss Issue Four alleging that the OAH lacks jurisdiction to hear Issue Four.

OAH received no response to the Motion to Dismiss Issue Four from Student.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.)(Section 504).

Issue Four of the complaint alleges that the District has failed to properly assess Student and provide him with a proper placement and services which resulted in a denial of a free appropriate public education (FAPE). In stating his argument, Student refers to Section 504 and then alleges that the “District did stereotype the Student as a student that could not learn and as a result did not properly assess, locate placement or provide services appropriate for Student.”¹ (Complaint, p. 10.)

In Issue Four, Student is alleging that the District has violated Section 504 by discriminating against Student because of his disability. OAH lacks jurisdiction over the issue as pled.

ORDER

The District’s Motion to Dismiss Issue Four is granted. Issue Four is dismissed. The matter will proceed as scheduled.

IT IS SO ORDERED.

DATE: May 28, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

¹ Student fails to allege that a specific assessment was not appropriate in his complaint.